IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1125 OF 2002

India United Mill No.2,
Unit of National Textile Corporation
(MN) Ltd. ..Petitioners.

Vs.

Shri. Shamrao Krishna Thambre & anr..Respondents.

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Mr.Mridula Bhatia with Mr.Joseph Fernandes for the Petitioners.

Ms.N.D.Buch with Ms.Bina Dholakia for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

24th March, 2005.

P.C. :

1. The First Respondent joined the services of a textile mill on 8th June, 1969 as a typist cum-clerk and he was in employment until 31st May, 2000 when he was superannuated upon attaining the age of 60 years. The First Respondent was promoted

as a Head Clerk from January 1993. A complaint was filed before the Industrial Court under Items 5, 9 and 10 of of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The case of the First Respondent was that he was entitled to continue in service until the age of 63 under the certified standing orders as applicable to clerks in the establishment of the Petitioner. The standing orders for clerks which were certified to come into force with effect from 1st April, 1952 contained the following provision in regard to the age of retirement :

> "11-A any employee shall retire from service on attaining the age of 60 years but a male employee shall be retained in service, if he continues to be efficient upto the age of 63 years provided that when retrenchment becomes necessary, on employee who has completed the age of 60 may be retired in preference to younger men."

2. The expression ’employee’ is defined in clause

2(a) to mean a clerk. There are similar certified standing orders that are applicable to operatives and standing order 20-A is similar to Standing order 11-A which has been noted above. The contention of the Petitioner was that the First Respondent upon promotion as a Head Clerk on 1st June, 1993 ceased to be an employee within the meaning of Section 3(13) of the Bombay Industrial Relations Act, 1946 inasmuch as he was employed primarily in a supervisory capacity and was drawing pay in excess of Rs.1,000/- per month. In the written statement which was filed on behalf of the Petitioner, it was averred that the First Respondent was supervising the work of employees working under him; that his conditions of service as part of the supervisory staff were totally different from those of the clerks employed in the Cotton Textile Industry. It was then averred that the First Respondent was entitled to medical reimbursement upto Rs.1,000/- per year, hospitalization for himself and his family without any limit and that his pay scale as a member of the supervisory staff was different from the pay scale which is applicable to the clerks. It was also averred in the written statement that the First

Respondent was sanctioning leave applications of clerks working under him and had also signed a charge sheet for disciplinary action. According to the management, being a member of the supervisory staff his age of retirement would be 60 years and that there was no provision for extension upto the age of 63. The Industrial Court by its impugned order dated 26th September, 2001 answered the question as to whether the First Respondent was a workman or an employee within the meaning of Section 3(13) in the affirmative.

3. In the course of his deposition the First Respondent stated that a letter has been issued to him when he was promoted on 1st January, 1993. Though no duty list was issued, he stated that as a Head Clerk, he used to maintain the record regarding the wages of all the staff including senior clerks, typists, officers etc. and that he maintained the leave record. In the course of his cross examination, the First Respondent admitted that he has signed a charge sheet dated 22nd February, 2000 under which disciplinary proceedings were adopted against a workman. Similarly, the First Respondent admitted that he was signing upon

the leave applications of the workmen and that in some of those he had signed as a Head of the Department. The First Respondent stated that it was correct that there was a hierarchy of employees in his department consisting of office typist, clerk, chief clerk and head clerk. The First Respondent admitted that it was correct that his wage slip for the relevant period did not contain a deduction on account of E.S.I. The First Respondent stated that there was only one post of a Head Clerk in the company. The witness who deposed on behalf of the management stated that the Head Clerk used to allot work to them. In so far as the sanctioning of leave is concerned, one of the witnesses stated that besides the signature of the Head Clerk, the signature of the Time Keeper and General Manager is also essential.

4. There are three circumstances which, in my view, ought to have been considered by the Court below but which have not been considered. The first is the circumstance that the First Respondent had in the course of his duties issued a charge sheet for disciplinary action against a workman of the employer. The second is the admitted position

that upon the leave applications of workmen, the First Respondent had endorsed his recommendation as the Head of the Department. The third is the admission of the First Respondent of the existence of a hierarchy and that there was only one post of Head Clerk. These circumstances constitute important material on the record which ought to have been considered by the Industrial Court. However, at the hearing of the Petition, counsel appearing on behalf of the First Respondent submitted that it was the case of the First Respondent that all other Head Clerks in the establishment of the Petitioner had been treated on the basis that they were workmen and that they had been retired at the age of 63 years after seeking an extension in service. The question as to whether a workman who is a member of the clerical staff in a textile mill, would be entitled to the benefit of extension in service till the age of 63 has been considered in judgments of this Court in Maharashtra State Textile Corporation Limited v. Vasudev Vinayak Joshi (1989 II CLR 589) and in Tata Textile Mills (U.C.) v.Munnilal Nanhoo Yadav (1990 I CLR 120). While considering the provisions of the relevant standing order which was pari materia

the Division Bench held that unless in the opinion of the employer honestly and properly arrived at, the male operative has lost his efficiency, he would have to be continued in service until the extended limit of 63 years. This the Division Bench held was the obligation of the employer and the right of the employee, provided he continues to remain efficient until he reaches the outer limit. The outcome of the present proceedings would therefore turn on the question as to whether or not the First Respondent was a workman because if he was a workman, his case would have to be dealt with on the basis of the law as it emerges from these judgments. Counsel appearing on behalf of the First Respondent submitted that when the witnesses for the Petitioner were asked as to whether the Head Clerks who immediately preceded the First Respondent in that position, had been extended until the age of 63, the witness stated that he was unaware of this position. In my view, this issue is of significance in the present case because if the employer had treated Head Clerks as workmen and had granted to them the benefit of the extended age of retirement of 63 years under Standing Order 11-A, then it would not be open to the employer to

adopt a contrary position in relation to the First Respondent. Counsel appearing on behalf of the First Respondent has, therefore, fairly submitted that it would be appropriate for this Court to remand the matter back to the Industrial Court for fresh determination and that the First Respondent would move an application before the Industrial Court for the issuance of summons for production of the relevant service record which is in the possession of the company. The prayer for remand has not been opposed on behalf of the Petitioner.

5. In the circumstances, the impugned order of the Industrial Court dated 26th September, 2001 is quashed and set aside. Complaint (ULP) 270 of 2000 is restored to the file of the Industrial Court which shall hear and dispose of the complaint as expeditiously as possible. The parties shall appear before the Industrial Court for directions on 11th April, 2005 and the Industrial Court shall endeavour to dispose of the complaint after hearing the parties preferably by 30th September, 2005. The Petition is accordingly disposed of. No order as to costs.